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18
19 UNITED STATES DISTRICT COURT
20 EASTERN DISTRICT OF WASHINGTON

21 ANDRES SOSA SEGURA,

22 Plaintiff,

23 v.

24 UNITED STATES OF AMERICA,

25 Defendant.
26

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 27, 2020

SEAN F. MCAVOY, CLERK

CASE NO. 2:19-CV-00219-SAB

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the court hereby enters the following Protective Order. This Order does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged:

- a) personally identifying information and other non-public personal information (e.g., health, financial, and employment records) of the producing party or the producing party's family members or employees;
- b) Andres Sosa Segura's Immigration "Alien File" ("A-File"), as well as other United States Border Patrol, United States Immigration and Customs Enforcement, and/or other government agency records that reference Mr. Sosa Segura's immigration status;
- c) state and local law enforcement records relating to Andres Sosa Segura;
- d) Official Personnel File ("OPF") of Randall Roberts that is restricted from disclosure by the Privacy Act, 5 U.S.C. § 552a or other applicable privacy disclosure protections;¹

¹ Pursuant to 5 U.S.C. § 552a(11), and subject to the conditions described herein, Defendant is authorized to release to Plaintiff's counsel government records and information containing what Defendant asserts is Privacy Act protected personal information of non-party individuals. Without determining the issue, Defendant

- 1 e) OPF of Brian Flynn that is restricted from disclosure by the Privacy Act, 5
2 U.S.C. § 552a or other applicable privacy disclosure protections;
- 3 f) agency records relating to law enforcement activities/operations,
4 guidelines for operations, training materials, and internal investigations
5 which (1) contain tactical information not available to the general public
6 that could be adversely used against law enforcement by non-law abiding
7 groups or individuals and/or (2) contain sensitive information about the
8 Border Patrol's staffing, priorities, resources, intelligence and/or methods,
9 in particular, that is law enforcement sensitive and should not be released
10 to the general public; and
- 11 g) any information that the producing party is obligated by contract or state
12 or federal law to keep confidential.

13 Notwithstanding the above, the parties reserve the right to challenge the
14 discoverability of any document that falls within the definition of "Confidential"
15 material. The parties further reserve the right to challenge the designation of
16 confidentiality of any document using the procedure described in paragraph 6.

17 3. SCOPE

18 The protections conferred by this Order cover not only confidential material
19 (as defined above), but also (1) any information copied or extracted from
20 confidential material; (2) all copies, excerpts, summaries, or compilations of
21 confidential material; and (3) any testimony, conversations, or presentations by
22 parties or their counsel that might reveal confidential material.

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25 may disclose the subject records and information to Plaintiff's counsel without
26 obtaining prior written consent of the individuals to whom those records pertain,
and such disclosure will not violate the Privacy Act.

1 However, the protections conferred by this Order do not cover information
2 that is in the public domain or becomes part of the public domain through trial or
3 otherwise.

4 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5 4.1 Basic Principles. A receiving party may use confidential material that
6 is disclosed or produced by another party or by a non-party in connection with this
7 case only for prosecuting, defending, or attempting to settle this litigation.
8 Confidential material may be disclosed only to the categories of persons and under
9 the conditions described in this Order. Confidential material must be stored and
10 maintained by a receiving party at a location and in a secure manner that ensures that
11 access is limited to the persons authorized under this Order.

12 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the designating party, a
14 receiving party may disclose any confidential material only to:

15 (a) the receiving party’s counsel of record in this action, as well as
16 employees of counsel to whom it is reasonably necessary to disclose the information
17 for this litigation;

18 (b) the officers, directors, and employees (including in house
19 counsel) of the receiving party to whom disclosure is reasonably necessary for this
20 litigation, unless the parties agree that a particular document or material produced is
21 for Attorney’s Eyes Only and is so designated;

22 (c) experts and consultants to whom disclosure is reasonably
23 necessary for this litigation and who have signed the “Acknowledgment and
24 Agreement to Be Bound” (Exhibit A);

25 (d) the court, court personnel, and court reporters and their staff;
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1 (e) copy or imaging services retained by counsel to assist in the
2 duplication of confidential material, provided that counsel for the party retaining the
3 copy or imaging service instructs the service not to disclose any confidential material
4 to third parties and to immediately return all originals and copies of any confidential
5 material;

6 (f) during their depositions, witnesses in the action to whom
7 disclosure is reasonably necessary and who have signed the “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
9 party or ordered by the court. Pages of transcribed deposition testimony or exhibits
10 to depositions that reveal confidential material must be separately bound by the court
11 reporter and may not be disclosed to anyone except as permitted under this Order;

12 (g) the author or recipient of a document containing the information
13 or a custodian or other person who otherwise possessed or knew the information.

14 4.3 Filing Confidential Material. Before filing confidential material or
15 discussing or referencing such material in court filings, the filing party shall confer
16 with the designating party to determine whether the designating party will remove
17 the confidential designation, whether the document can be redacted, or whether a
18 motion to seal or stipulation and proposed order is warranted. During the meet and
19 confer process, the designating party must identify the basis for sealing the specific
20 confidential information at issue, and the filing party shall include this basis in its
21 motion to seal, along with any objection to sealing the information at issue. The
22 motion to seal will be filed in accordance with Local Civil Rule 7. The Court will
23 review the motion and determine whether the party who seeks to maintain the
24 confidentiality of its information has satisfied the requirements to seal. The burden
25 of proving the confidentiality of designated information remains with the
26 designating party, even if it is not the party filing the motion to seal. Failure to

1 satisfy this requirement will result in the motion to seal being denied, in accordance
2 with the strong presumption of public access to the Court's files.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

5 Each party or non-party that designates information or items for protection under
6 this Order must take care to limit any such designation to specific material that
7 qualifies under the appropriate standards. The designating party must designate for
8 protection only those parts of material, documents, items, or oral or written
9 communications that qualify, so that other portions of the material, documents,
10 items, or communications for which protection is not warranted are not swept
11 unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations
13 that are shown to be clearly unjustified or that have been made for an improper
14 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
15 to impose unnecessary expenses and burdens on other parties) expose the
16 designating party to sanctions.

17 If it comes to a designating party's attention that information or items that it
18 designated for protection do not qualify for protection, the designating party must
19 promptly notify all other parties that it is withdrawing the mistaken designation.

20 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
21 this Order (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
22 stipulated or ordered, disclosure or discovery material that qualifies for protection
23 under this Order must be clearly so designated before or when the material is
24 disclosed or produced.

25 (a) **Information in documentary form:** (*e.g.*, paper or electronic
26 documents and deposition exhibits, but excluding transcripts of depositions or other

1 pretrial or trial proceedings), the designating party must affix the word
2 “CONFIDENTIAL” to each page that contains confidential material. If only a
3 portion or portions of the material on a page qualifies for protection, the producing
4 party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
5 markings in the margins).

6 (b) Testimony given in deposition or in other pretrial proceedings:
7 the parties and any participating non-parties must identify on the record, during the
8 deposition or other pretrial proceeding, all protected testimony, without prejudice to
9 their right to so designate other testimony after reviewing the transcript. Any party
10 or non-party may, within fifteen days after receiving the transcript of the deposition
11 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,
12 as confidential. If a party or non-party desires to protect confidential information at
13 trial, the issue should be addressed during the pre-trial conference.

14 (c) Other tangible items: the producing party must affix in a
15 prominent place on the exterior of the container or containers in which the
16 information or item is stored the word “CONFIDENTIAL.” If only a portion or
17 portions of the information or item warrant protection, the producing party, to the
18 extent practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive
21 the designating party’s right to secure protection under this Order for such material.
22 Upon timely correction of a designation, the receiving party must make reasonable
23 efforts to ensure that the material is treated in accordance with the provisions of this
24 Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any party or non-party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a
4 designating party's confidentiality designation is necessary to avoid foreseeable,
5 substantial unfairness, unnecessary economic burdens, or a significant disruption or
6 delay of the litigation, a party does not waive its right to challenge a confidentiality
7 designation by electing not to mount a challenge promptly after the original
8 designation is disclosed.

9 6.2 Meet and Confer. The parties must make every attempt to resolve any
10 dispute regarding confidential designations without court involvement. Any motion
11 regarding confidential designations or for a protective order must include a
12 certification, in the motion or in a declaration or affidavit, that the movant has
13 engaged in a good faith meet and confer conference with other affected parties in an
14 effort to resolve the dispute without court action. The certification must list the date,
15 manner, and participants to the conference. A good faith effort to confer requires a
16 face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
18 court intervention, the designating party may file and serve a motion to retain
19 confidentiality under Local Civil Rule 7 within 14 days of the parties conferring.
20 The burden of persuasion in any such motion shall be on the designating party.
21 Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or
22 impose unnecessary expenses and burdens on other parties) may expose the
23 challenging party to sanctions. All parties shall continue to maintain the material in
24 question as confidential until the court rules on the challenge.
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1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that party must:

6 (a) promptly notify the designating party in writing and include a
7 copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or
9 order to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this Order. Such notification shall include a copy of
11 this Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the designating party whose confidential material may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under this
17 Order, the receiving party must immediately (a) notify in writing the designating
18 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
19 unauthorized copies of the protected material, (c) inform the person or persons to
20 whom unauthorized disclosures were made of all the terms of this Order, and (d)
21 request that such person or persons execute the “Acknowledgment and Agreement
22 to Be Bound” that is attached hereto as Exhibit A.

23 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

25 When a producing party gives notice to receiving parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,

1 the obligations of the receiving parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order or agreement that provides for production
4 without prior privilege review. The parties agree to the entry of a non-waiver order
5 under Fed. R. Evid. 502(d) as set forth herein.

6 10. NON TERMINATION AND RETURN OF DOCUMENTS

7 Within 60 days after the termination of this action, including all appeals, each
8 receiving party must return all confidential material to the producing party, including
9 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
10 appropriate methods of destruction.

11 Notwithstanding this provision, counsel are entitled to retain one archival
12 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
13 correspondence, deposition and trial exhibits, expert reports, attorney work product,
14 and consultant and expert work product, even if such materials contain confidential
15 material.

16 The confidentiality obligations imposed by this Order shall remain in effect
17 until a designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO ORDERED.

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3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
4 production of any documents in this proceeding shall not, for the purposes of this
5 proceeding or any other federal or state proceeding, constitute a waiver by the
6 producing party of any privilege applicable to those documents, including the
7 attorney-client privilege, attorney work-product protection, or any other privilege or
8 protection recognized by law.
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10 DATED: February 27, 2020
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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

16 Stanley A. Bastian
17 United States District Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the Protective
6 Order that was issued by the United States District Court for the Eastern District of
7 Washington in the case of *Sosa Segura v. United States*, 2:19-CV-00219 (E.D.
8 Wash.). I agree to comply with and to be bound by all the terms of this Protective
9 Order and I understand and acknowledge that failure to so comply could expose me
10 to sanctions and punishment in the nature of contempt. I solemnly promise that I will
11 not disclose in any manner any information or item that is subject to this Protective
12 Order to any person or entity except in strict compliance with the provisions of this
13 Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Eastern District of Washington for the purpose of enforcing the terms of this
16 Protective Order, even if such enforcement proceedings occur after termination of
17 this action.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____